

A Regular Meeting of the Zoning Board of Appeals of the Town of Lancaster, Erie County, New York, was held at the Lancaster Town Hall, 21 Central Avenue, Lancaster, New York, on the 12th day of June 2003, at 8:00 P.M., and there were

PRESENT: WILLIAM MARYNIEWSKI, MEMBER  
RICHARD QUINN, MEMBER  
ARLIE SCHWAN, MEMBER  
ROBERT THILL, MEMBER  
JEFFREY LEHRBACH, CHAIRMAN

ABSENT: ANTHONY ESPOSITO, MEMBER  
JOSEPH GIGLIA, MEMBER

ALSO PRESENT: MARY ANN PERRELLO, DEPUTY TOWN CLERK  
RICHARD SHERWOOD, TOWN ATTORNEY  
JEFFREY SIMME, BUILDING INSPECTOR

The Affidavits of Publication and Posting of this Public Hearing are on file and a copy of the Legal Notice has been posted.

**PETITION OF TIM HORTONS GROUP:**

THE 1st CASE TO BE HEARD BY THE Zoning Board of Appeals was that of the petition of Tim Hortons Group, 4455 Transit Road, Williamsville, New York 14221, for one [1] variance for the purpose of adding thirteen [13] square feet of signage to an existing pole sign located at 370 Central Avenue, Lancaster, New York on property owned by NOCO Energy Corp., 2440 Sheridan Drive, Tonawanda, New York 14150, to wit:

A variance from the requirements of Chapter 50, Zoning, Section 30F.(2)(c)[3][e] of the Code of the Town of Lancaster. The total face area of the proposed pole sign (13 square feet) when added to the existing sign area (62 square feet) is seventy five [75] square feet.

Chapter 50, Zoning, Section 30F.(2)(c)[3][e] of the Code of the Town of Lancaster limits the total maximum face area of a pole sign on the premises to sixty four [64] square feet. The petitioner, therefore, requests an eleven [11] square foot variance of the total maximum face area permitted for this proposed pole sign.

**The Clerk presented and entered into evidence the following items:**

Duly executed petition of the applicant with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioner of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

Copy of a letter notifying the Erie County Department of Planning and the Village of Lancaster of the time and place of this public hearing.

**PERSONS ADDRESSING THE BOARD**

Lou Terragnoli, Jr.,  
Director of Real Estate for Tim Hortons  
4455 Transit Road, Suite 2B  
Williamsville, New York 14086

Proponent

**IN THE MATTER OF THE PETITION OF TIM HORTONS GROUP**

THE FOLLOWING RESOLUTION WAS OFFERED  
BY MR. THILL, WHO MOVED ITS  
ADOPTION, SECONDED BY MR. QUINN  
TO WIT:

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster has reviewed the application of Tim Hortons Group and has heard and taken testimony and evidence at a public hearing held before it at 21 Central Avenue, Lancaster, New York, on the 12th day of June 2003, and having heard all parties interested in said application pursuant to legal notice duly published and posted, and

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster has requested further information from the Building Inspector regarding the possible need for a second variance for total square footage of signage.

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster, with the concurrence of the petitioner, agrees that an adjournment of this hearing is in the best interest of both the residents of the Town of Lancaster and the petitioner.

**NOW, THEREFORE, BE IT**

**RESOLVED** that this hearing be adjourned to allow for further testimony and evidence to be presented.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

MR. ESPOSITO	WAS ABSENT
MR. GIGLIA	WAS ABSENT
MR. MARYNIEWSKI	VOTED YES
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

**The resolution to adjourn the variance was adopted.**

June 12, 2003

**PETITION OF KENNETH AND SUSAN SURDEJ:**

THE 2nd CASE TO BE HEARD BY THE Zoning Board of Appeals was that of the petition of Kenneth and Susan Surdej, 40 Stony Brook Drive, Lancaster, New York 14086 for one [1] variance for the purpose of constructing a swimming pool cabana on premises owned by the petitioners at 40 Stony Brook Drive, Lancaster, New York, to wit:

A variance from the requirements of Chapter 50, Zoning, Section 10D.(1)(b) of the Code of the Town of Lancaster. The proposed location of the accessory structure will result in a two point four [2.4] foot lot line set back.

Chapter 50, Zoning, Section 10D.(1)(b) of the Code of the Town of Lancaster requires a five [5] foot lot line set back. The petitioners, therefore, request a two point six [2.6] foot lot line set back variance.

**The Clerk presented and entered into evidence the following items:**

Duly executed petition of the applicants with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioners of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

**PERSONS ADDRESSING THE BOARD**

Susan Surdej, the petitioner  
40 Stony Road  
Lancaster, New York 14086

Proponent

**IN THE MATTER OF THE PETITION OF KENNETH & SUSAN SURDEJ**

THE FOLLOWING RESOLUTION WAS OFFERED  
BY MR. THILL, WHO MOVED ITS  
ADOPTION, SECONDED BY MR. LEHRBACH  
TO WIT:

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster has reviewed the application of Kenneth & Susan Surdej and has heard and taken testimony and evidence at a public hearing held before it at 21 Central Avenue, Lancaster, New York, on the 12th day of June 2003, and having heard all parties interested in said application pursuant to legal notice duly published and posted, and

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster has made the following findings:

That the applicants are the present owners of the premises in question.

That the property for which the applicants is petitioning is within a Residential District 1, (R1) as shown on the Zoning Map of the Town of Lancaster.

That the use sought is a permitted use appearing in the Residential District 1, (R1) as specified in Chapter 50 of the Code of the Town of Lancaster.

That no undesirable change will be produced in the character of the neighborhood by the granting of the area variance relief sought.

That no detriment to nearby properties will be created by the granting of the area variance relief sought.

That the benefit sought by the applicants cannot be achieved by some other method, feasible for the applicants to pursue, other than the area variance relief sought.

That the requested area variance relief is not substantial.

That the proposed area variance relief will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

That the alleged difficulty is self created but not to the extent necessary to preclude the granting of the area variance relief sought.

That this board has taken into consideration the benefit to the applicants if the variance relief sought is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.

That within the intent and purposes of this ordinance the variance relief sought, if granted, is the minimum variance necessary to afford relief.

**NOW, THEREFORE, BE IT  
RESOLVED** that based upon these findings, the relief sought be and is hereby  
**GRANTED.**

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

MR. ESPOSITO	WAS ABSENT
MR. GIGLIA	WAS ABSENT
MR. MARYNIEWSKI	VOTED YES
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

The resolution granting the variance was thereupon **ADOPTED.**

June 12, 2003

**PETITION OF ROBERT HENSEN:**

THE 3rd CASE TO BE HEARD BY THE Zoning Board of Appeals was that of the petition of Robert H. Hensen, 5265 William Street, Lancaster, New York 14086 for one [1] variance for the purpose of constructing an addition to an existing garage on premises owned by the petitioner at 5265 William Street, Lancaster New York, to wit:

A variance from the requirements of Chapter 50, Zoning, Section 9D.(4) of the Code of the Town of Lancaster. The area of the proposed addition, 228 square feet, when added to the existing garage area, 576 square feet, is 804 square feet.

Chapter 50, Zoning, Section 9D.(4) of the Code of the Town of Lancaster limits the area of an accessory structure to 750 square feet. The petitioner, therefore, requests a 54 square foot accessory use area variance.

**The Clerk presented and entered into evidence the following items:**

Duly executed petition of the applicant with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioner of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

**PERSONS ADDRESSING THE BOARD**

Robert Hensen, the petitioner  
5265 William Street  
Lancaster, New York 14086

Proponent

**IN THE MATTER OF THE PETITION OF ROBERT HENSEN**

THE FOLLOWING RESOLUTION WAS OFFERED  
BY MR. LEHRBACH, WHO MOVED ITS  
ADOPTION, SECONDED BY MR. THILL  
TO WIT:

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster has reviewed the application of Robert Hensen and has heard and taken testimony and evidence at a public hearing held before it at 21 Central Avenue, Lancaster, New York, on the 12th day of June 2003, and having heard all parties interested in said application pursuant to legal notice duly published and posted, and

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster has made the following findings:

That the applicant is the present owner of the premises in question.

That the property for which the applicant is petitioning is within an Agricultural Residential District, (AR) as shown on the Zoning Map of the Town of Lancaster.

That the use sought is a permitted use appearing in the Agricultural Residential District, (AR) as specified in Chapter 50 of the Code of the Town of Lancaster.

That no undesirable change will be produced in the character of the neighborhood by the granting of the area variance relief sought.

That no detriment to nearby properties will be created by the granting of the area variance relief sought.

That the benefit sought by the applicant cannot be achieved by some other method, feasible for the applicant to pursue, other than the area variance relief sought.

That the requested area variance relief is not substantial, namely a 7% variance relief.

That the proposed area variance relief will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

That the alleged difficulty is self created but not to the extent necessary to preclude the granting of the area variance relief sought.

That this board has taken into consideration the benefit to the applicant if the variance relief sought is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.

**NOW, THEREFORE, BE IT  
RESOLVED**, that based upon these findings, the relief sought be and is hereby  
**GRANTED.**

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

MR. ESPOSITO	WAS ABSENT
MR. GIGLIA	WAS ABSENT
MR. MARYNIEWSKI	VOTED YES
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

The resolution granting the variance was thereupon **ADOPTED.**

June 12, 2003

**PETITION OF ANTHONY P. SANTUCCI:**

THE 4TH CASE TO BE HEARD BY THE Zoning Board of Appeals was that of the petition of Anthony P. Santucci, 233 Pleasant View Drive, Lancaster, New York 14086 for two [2] variances for the purpose of constructing a pole barn on premises owned by the petitioner at 233 Pleasant View Drive, Lancaster, New York, to wit:

1. A variance from the requirements of Chapter 50, Zoning, Section 10.D.(4) of the Code of the Town of Lancaster. The area of the proposed accessory structure is three thousand [3,000] square feet.

Chapter 50, Zoning, Section 10.D.(4) of the Code of the Town of Lancaster limits the area of accessory structures to seven hundred fifty [750] square feet. The petitioner, therefore, requests a two thousand two hundred and fifty [2,250] square foot variance.

2. A variance from the requirements of Chapter 50, Zoning, Section 10.D.(2) of the Code of the Town of Lancaster. The height of the proposed accessory structure is twenty four [24] feet.

Chapter 50, Zoning, Section 10.D.(2) of the Code of the Town of Lancaster limits the height of accessory structures to sixteen [16] feet. The petitioner, therefore, requests an eight [8] foot height variance.

**The Clerk presented and entered into evidence the following items:**

Duly executed petition of the applicant with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioner of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

**PERSONS ADDRESSING THE BOARD**

Anthony Santucci, the petitioner  
233 Pleasant View Drive  
Lancaster, New York 14086

Proponent

**IN THE MATTER OF THE PETITION OF ANTHONY SANTUCCI**

THE FOLLOWING RESOLUTION WAS OFFERED  
BY MR. QUINN, WHO MOVED ITS  
ADOPTION, SECONDED BY MR. SCHWAN  
TO WIT:

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster has reviewed the application of Anthony P. Santucci and has heard and taken testimony and evidence at a public hearing held before it at 21 Central Avenue, Lancaster, New York, on the 12th day of June 2003, and having heard all parties interested in said application pursuant to legal notice duly published and posted, and

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster has made the following findings:

That the applicant is the present owner of the premises in question.

That the property for which the applicant is petitioning is within a Residential District 1, (R1) as shown on the Zoning Map of the Town of Lancaster.



That the use sought is a permitted use appearing in the Residential District 1, (R1) as specified in Chapter 50 of the Code of the Town of Lancaster.

That no undesirable change will be produced in the character of the neighborhood by the granting of the area variance relief sought.

That no detriment to nearby properties will be created by the granting of the area variance relief sought.

That the benefit sought by the applicant cannot be achieved by some other method, feasible for the applicant to pursue, other than the area variance relief sought.

That the requested area variance relief is not substantial.

That the proposed area variance relief will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district since another pole barn is located on nearby property.

That the alleged difficulty is self created but not to the extent necessary to preclude the granting of the area variance relief sought.

That this board has taken into consideration the benefit to the applicant if the variance relief sought is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.

That within the intent and purposes of this ordinance the variance relief sought, if granted, is the minimum variance necessary to afford relief.

**NOW, THEREFORE, BE IT**

**RESOLVED** that based upon these findings, the relief sought be and is hereby **GRANTED**-subject to the following conditions which in the opinion of this board are appropriate conditions to minimize adverse effects on the character of the surrounding area and to safeguard the public health, safety, convenience and general welfare:

- That no commercial enterprise, other than those permitted by Code of the Town of Lancaster, be conducted on the premises.
- That the structure is to be painted earth tones and the roof is not of a reflecting material but rather also in earth tones.
- That the existing shed shall be moved to the rear of the pole barn.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

MR. ESPOSITO	WAS ABSENT
MR. GIGLIA	WAS ABSENT
MR. MARYNIEWSKI	VOTED YES
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

The resolution granting the variances was thereupon **ADOPTED**.

June 12, 2003

**PETITION OF RORY & TAMMY CERA:**

THE 5th CASE TO BE HEARD BY THE Zoning Board of Appeals was that of the petition of Rory and Tammy Cera, 4812 William Street, Lancaster, New York 14086 for one [1] variance for the purpose of constructing an attached garage to a single family dwelling on premises owned by the petitioners at 4812 William Street, Lancaster, New York, to wit:

A variance from the requirements of Chapter 50, Zoning, Section 10C.(3)(b)(1) of the Code of the Town of Lancaster. The location of the proposed dwelling would result in an east side yard set back of 6.78 feet.

Chapter 50, Zoning, Section 10C.(3)(b)(1) of the Code of the Town of Lancaster requires a ten [10] foot east side yard set back. The petitioners, therefore, request an east side yard set back variance of 3.22 feet.

**The Clerk presented and entered into evidence the following items:**

Duly executed petition of the applicants with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioners of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

**PERSONS ADDRESSING THE BOARD**

Tammy Cera, the petitioner  
4812 William Street  
Lancaster, New York 14086

Proponent

Rory Cera, the petitioner  
4812 William Street  
Lancaster, New York 14086

Proponent

**IN THE MATTER OF THE PETITION OF RORY & TAMMY CERA**

THE FOLLOWING RESOLUTION WAS OFFERED  
BY MR. LEHRBACH, WHO MOVED ITS  
ADOPTION, SECONDED BY MR. MARYNIEWSKI  
TO WIT:

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster has reviewed the application of Rory and Tammy Cera and has heard and taken testimony and evidence at a public hearing held before it at 21 Central Avenue, Lancaster, New York, on the 12th day of June 2003, and having heard all parties interested in said application pursuant to legal notice duly published and posted, and

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster has made the following findings:

That the applicants are the present owners of the premises in question.

That the property for which the applicants are petitioning is within a Residential District 1, (R1) as shown on the Zoning Map of the Town of Lancaster.

That the property for which the applicants are petitioning is within a Residential District 1, (R1) as shown on the Zoning Map of the Town of Lancaster.

That the use sought is a permitted use appearing in the Residential District 1, (R1) as specified in Chapter 50 of the Code of the Town of Lancaster.

That no undesirable change will be produced in the character of the neighborhood by the granting of the area variance relief sought.

That no detriment to nearby properties will be created by the granting of the area variance relief sought.

That the benefit sought by the applicants cannot be achieved by some other method, feasible for the applicants to pursue, other than the area variance relief sought.

That the requested area variance relief is not substantial.

That the proposed area variance relief will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

That the alleged difficulty is self created but not to the extent necessary to preclude the granting of the area variance relief sought.

That this board has taken into consideration the benefit to the applicants if the variance relief sought is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.

That within the intent and purposes of this ordinance the variance relief sought, if granted, is the minimum variance necessary to afford relief.

**NOW, THEREFORE, BE IT  
RESOLVED**, that based upon these findings, the relief sought be and is hereby  
**GRANTED**

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

MR. ESPOSITO	WAS ABSENT
MR. GIGLIA	WAS ABSENT
MR. MARYNIEWSKI	VOTED YES
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

The resolution granting the variance was thereupon **ADOPTED**.

June 12, 2003

**PETITION OF FORBES/CAPRETTO HOMES:**

THE 6th CASE TO BE HEARD BY THE Zoning Board of Appeals was that of the petition of Forbes/Capretto Homes, 2635 Millersport Highway, Getzville, New York 14068 for one [1] variance for the purpose of constructing a single family dwelling on premises owned by the petitioner at 2 Walnut Creek Trail, Lancaster, New York, to wit:

A variance from the requirements of Chapter 50, Zoning, Section 10C.(3)(a) of the Code of the Town of Lancaster. The proposed addition would result in a front yard set back of twenty-nine feet, three inches [29'-3"].

Chapter 50, Zoning, Section 10C.(3)(a) of the Code of the Town of Lancaster requires a thirty-five [35] foot front yard set back. The petitioner, therefore, requests a five foot, nine inch [5'-9"] front yard set back variance.

**The Clerk presented and entered into evidence the following items:**

Duly executed petition of the applicant with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioner of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

**PERSONS ADDRESSING THE BOARD**

Timothy Morgan, Director of Development  
2635 Millersport Highway  
Getzville, New York 14068

Proponent

Elaine Pauly  
7 Walnut Creek Trail  
Lancaster, New York 14086

Opponent

Linda Hoppy  
1 Walnut Creek Trail  
Lancaster, New York 14086

Opponent

**IN THE MATTER OF THE PETITION OF FORBES/CAPRETTO HOMES**

THE FOLLOWING RESOLUTION WAS OFFERED  
BY MR. LEHRBACH, WHO MOVED ITS  
ADOPTION, SECONDED BY MR. QUINN  
TO WIT:

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster has reviewed the application of Forbes/Capretto Homes and has heard and taken testimony and evidence at a public hearing held before it at 21 Central Avenue, Lancaster, New York, on the 12th day of June 2003, and having heard all parties interested in said application pursuant to legal notice duly published and posted, and

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster has made the following findings:

That the applicant is the present owner of the premises in question.

That the property for which the applicant is petitioning is within a Residential District 1, (R1) as shown on the Zoning Map of the Town of Lancaster.

That the use sought is a permitted use appearing in the Residential District 1, (R1) as specified in Chapter 50 of the Code of the Town of Lancaster.

That the petitioner purchased the lot in question approximately six (6) months ago.

That the petitioner is in the real estate development business and at the time of purchase had knowledge of or should have had knowledge of the set back requirements that are contained in Chapter 50 of the Code of the Town of Lancaster.

That the petitioner has a purchaser/client who desires only a one floor dwelling plan on this lot.

That Elaine Pauly, and Linda Hoppy, neighbors on Walnut Creek Trail, expressed opposition to granting of this variance, namely the proposed square footage of the dwelling would not be consistent with other homes on Walnut Creek Trail and the reduced set back would set a precedent for other lots on the street.

That the granting of the proposed variance would limit the front yard sight line of sub lot #2 to the west.

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#### REQUEST FOR ADJOURNMENT

At this time the petitioner asked if this matter could be adjourned in order to allow him time to consult with his client/purchaser on possible changes to the proposed dwelling size and location in light of the evidence and testimony given at this hearing.

Mr. Lehrbach withdrew his previous motion and offered a motion for adjournment of this petition.

Upon motion by Mr. Lehrbach and seconded by Mr. Quinn, to adjourn this hearing on the petition of Forbes/Capretto Homes until the next meeting of the Zoning Board of Appeals scheduled for Thursday, July 10, 2003 at 8 P.M. at which time further evidence and testimony will be considered was duly put to a vote on roll call which resulted as follows:

MR. ESPOSITO	WAS ABSENT
MR. GIGLIA	WAS ABSENT
MR. MARYNIEWSKI	VOTED YES
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

The resolution granting the adjournment of the variance request for a maximum of sixty (60) days was thereupon **ADOPTED**.

June 12, 2003

ON MOTION DULY MADE, SECONDED AND CARRIED, the meeting was  
adjourned at 9:48 P.M.

Signed Mary Ann Perrello  
Mary Ann Perrello, Deputy Town Clerk  
Dated: June 12, 2003